

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD CLARENCE BABCOCK,

Petitioner,

v.

CIVIL CASE NO. 07-12913
HON. MARIANNE O. BATTANI

LINDA METRISH,

Respondent.

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ORDER DENYING PETITION FOR IMMEDIATE RELEASE FROM CUSTODY

This Court conditionally granted Ronald Clarence Babcock's petition for habeas relief on December 11, 2009, ordering that he be released or retried within 120 days. On January 19, 2010, the Court granted Respondent's Motion for Immediate Consideration and Motion for Stay Pending Appeal. After that Order was entered, the Court received Babcock's response to the motion as well as his Petition for Immediate Release from Custody (Doc. No. 26). The Court has reviewed the pleadings and for the reasons that follow, **DENIES** the petition.

Petitioner is a state inmate, currently serving a 46 to 360 months term of imprisonment as a fourth habitual felony offender for felon in possession of a firearm and felony firearms. When the Court granted Respondent's request for a stay pending resolution of the appeal, it carefully considered the matters raised in the Petition for

Immediate Release from Custody. The Court's analysis remains unchanged after considering the responsive pleading and the motion filed by Babcock.

Without question, Federal Rule of Appellate Procedure 23(c) "creates a presumption of release from custody" when a district court order grants relief to a habeas petitioner. Hilton v. Braunskill, 481 U.S. 770, 774 (1987). Consequently, the Court considered several factors in addressing Respondent's motion, including "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Id. at 776. In balancing the factors, this Court recognized that the Sixth Circuit Court of Appeals might disagree with the analysis of Petitioner's claim and concluded that Respondent has raised a debatable issue. See Order Granting Motion to Stay. The Court further concluded that the other factors favored entry of the Order. A review of the pleadings filed by Babcock fail to demonstrate the Court's analysis was contrary to law.

Accordingly, the Court **DENIES** Petition for Immediate Release from Custody.

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATED: March 19, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served upon counsel of record and Petitioner on this date by ordinary mail and/or electronic filing.

s/Bernadette M. Thebolt
CASE MANAGER